

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

K/S HIMPP,
Petitioner,

v.

III HOLDINGS 4, LLC,
Patent Owner.

Case No. IPR2017-00781
Patent 8,654,999

**PATENT OWNER OBJECTIONS TO PETITIONER EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

Mail Stop “Patent Board”
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Patent Owner, III Holdings 4, LLC, objects to the admissibility of the following evidence submitted by Petitioner K/S HIMPP pursuant to 37 C.F.R. § 42.64(b)(1). These objections are being timely filed within 10 business days after the Decision to Institute. Patent Owner asks the Patent Trial and Appeal Board to deny the admission and consideration of the following documents on the following bases:

Exhibit 1009 – German patent publication DE19542961 (“DE961”)

Patent Owner objects to the admission of Exhibit 1009 as irrelevant to this proceeding because Petitioner has not provide a translation of the foreign language document in accordance with 37 C.F.R. § 42.63(b) and 37 C.F.R. § 42.2, as further specified in 37 C.F.R. § 1.68 (affidavit) and 28 U.S.C. § 1746 (declaration). Because Petitioners did not offer competent evidence of a translation of the document into English and an affidavit attesting to the accuracy of the translation as required by the rules, Exhibit 1009 is not admissible evidence.

Patent Owner objects to this document as not properly authenticated under FRE 901 because Petitioners have not presented any evidence that the English language portions of the Exhibit are authentic or that the document is self-authenticating under FRE 902.

Exhibit 1011 – Michael Valente, “Guideline for Audiologic Management of the Adult Patient (“Valente”)

Patent Owner objects to the admission of Exhibit 1011 as irrelevant to this proceeding because Petitioner has not established that Exhibit 1011 qualifies as a prior art publication under 35 U.S.C. § 102. Because Petitioners did not offer competent evidence to show that Exhibit 1011 was publicly available before the earliest possible priority date of the ‘999 patent, Petitioner has not established that Exhibit 1011 is a prior art printed publication eligible for this IPR proceeding or consideration by the identified Expert Dr. Les Atlas, rendering the Exhibit 1011 reference irrelevant to this IPR proceeding pursuant to FRE 401 and inadmissible under FRE 402.

To the extent Petitioner relies on the contents of this document for the truth of the matter asserted, Patent Owner objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805, or 807. Specifically, to the extent that Petitioners rely on dates contained within Exhibit 1011, those dates are hearsay under FRE 801 and inadmissible under FRE 802.

Patent Owner objects to this document as not properly authenticated under FRE 901 because Petitioners have not presented any evidence that the document is authentic or that the document is self-authenticating under FRE 902.

Exhibit 1012 – Good Practice Guidance for Adult Hearing Aid Fittings and Services – Background to the Document and Consultation (“Good Practice Guidance”)

Patent Owner objects to the admission of Exhibit 1012 as irrelevant to this proceeding because Petitioner has not established that Exhibit 1012 qualifies as a prior art publication under 35 U.S.C. § 102. Because Petitioners did not offer competent evidence to show that Exhibit 1012 was publicly available before the earliest possible priority date of the ‘999 patent, Petitioner has not established that Exhibit 1012 is a prior art printed publication eligible for this IPR proceeding or consideration by the identified Expert Dr. Les Atlas, rendering the Exhibit 1012 reference irrelevant to this IPR proceeding pursuant to FRE 401 and inadmissible under FRE 402.

To the extent Petitioner relies on the contents of this document for the truth of the matter asserted, Patent Owner objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805, or 807. Specifically, to the extent that Petitioners rely on dates contained within Exhibit 1012, those dates are hearsay under FRE 801 and inadmissible under FRE 802.

Patent Owner objects to this document as not properly authenticated under FRE 901 because Petitioners have not presented any evidence that the document is authentic or that the document is self-authenticating under FRE 902.

Date: August 10, 2017

Respectfully submitted,

/Henry A. Petri, Jr./

Henry A. Petri, Jr., Reg. No. 33,063

Polsinelli PC

1000 Louisiana, Fifty-Third Floor

Houston, Texas 77002

Attorneys for Patent Owner

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.